

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
**ANDREA TOLEDO,**

Plaintiff,

Case No: 21-cv-882

-against-

**COMPLAINT**

Plaintiff Demands A Trial By Jury

**UNIBUD RESTORATION CORP.,  
BREND RESTORATION LLC,  
BREND RESTORATION SERVICES INC.,  
PAVARINI MCGOVERN, LLC, and CARLOS  
URIBE, individually.**

Defendants.  
-----X

Plaintiff, ANDREA TOLEDO (hereinafter referred to as “TOLEDO” and/or “Plaintiff”), by and through her attorneys, DEREK SMITH LAW GROUP, PLLC, hereby complains of Defendant UNIBUD RESTORATION CORP (hereinafter referred to as “UNIBUD”), Defendant BREND RESTORATION LLC (hereinafter referred to as “BREND”), Defendant BREND RESTORATION SERVICES INC. (hereinafter referred to as “BREND INC”), Defendant PAVARINI MCGOVERN (hereinafter referred to as “MCGOVERN”), (hereinafter collectively referred to as “Defendants”) and CARLOS URIBE, individually (hereinafter referred to as “URIBE” upon information and belief, as follows:

**NATURE OF CASE**

Plaintiff, ANDREA TOLEDO, complains pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166 (“Title VII”), the Administrative Code of the City of New York and the laws of the State of New York, based upon the supplemental jurisdiction of this Court

pursuant to *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966), and 28 U.S.C. §1367, seeking declaratory relief and damages to redress the injuries Plaintiff has suffered as a result of, *inter alia*, sex/gender discrimination, hostile work environment, sexual harassment and constructive discharge by Defendants.

### **JURISDICTION AND VENUE**

1. Jurisdiction of this action is conferred upon this Court as this case involves a Federal Question under Title VII. The Court also has jurisdiction pursuant to 29 U.S.C. §2617; 28 U.S.C. §1331, §1343 and pendent jurisdiction thereto.
2. Additionally, the Court has supplemental jurisdiction under the State and City laws of New York.
3. On or about October 21, 2019, Plaintiff ANDREA TOLEDO submitted a Charge of Discrimination to the U.S. Equal Employment Opportunity Commission (“EEOC”). The federal charge number is 520-2019-05894.
4. On or about November 6, 2020, Plaintiff ANDREA TOLEDO received a Right to Sue Letter from the EEOC for federal charge number 520-2019-05894.
5. Plaintiff satisfied all administrative prerequisites and is filing this case within the applicable Statute of Limitations.
6. Venue is proper in this court, as the events giving rise to this action arose in New York County, within the Southern District of New York.

### **PARTIES**

1. At all times material, Plaintiff Andrea Cadena Toledo (“TOLEDO” or “PLAINTIFF”) was and is an individual female, residing in the State of New York, Queens County.
2. At all times material, Defendant UNIBUD RESTORATION CORP. (hereinafter referred to as “UNIBUD”) was and is a domestic business corporation duly existing by the virtue and laws of

the state of New York.

3. At all times material, Defendant BREND RESTORATION LLC (hereinafter referred to as “BREND”) was and is a domestic limited liability corporation duly existing by the virtue and laws of the state of New York.
4. At all times material, Defendant BREND RESTORATION SERVICES INC. (hereinafter referred to as “RESTORATION”) was and is a domestic limited liability corporation duly existing by the virtue and laws of the state of New York.
5. At all times material, Defendant PAVARINI MCGOVERN, LLC (hereinafter referred to as “PAVARINI”) was and is a foreign limited liability corporation licensed to do business in the state of New York duly existing by the virtue and laws of the state of Delaware.
6. At all times material, Defendants’ were Plaintiff’s employer.
7. At all times material, CARLOS URIBE (“URIBE”) was a Supervisor jointly employed by Defendants, UNIBUD, BREND, RESTORATION and PAVARINI, and was Plaintiff’s supervisor.
8. At all times material, Defendant URIBE held the authority to hire and fire Complainant and direct the job duties of Complainant.
9. At all times material, ROBERT [Last Name Unknown] (“ROBERT”) was and still is one of the owners of Defendant UNIBUD.
10. At all times material, CESAR CASTIBLANCO was a Foreman jointly employed by Defendants, UNIBUD, BREND, RESTORATION and PAVARINI, and was Plaintiff’s supervisor.

## **STATEMENT OF FACT**

11. Around April 1, 2019, Defendants hired Plaintiff as a laborer following a telephone interview with Defendant URIBE.
12. Around April 21, 2019, Plaintiff awoke around 2:20AM to four missed calls from Defendant URIBE on WhatsApp which were made at 12:50 AM, 12:51AM, 12:52AM and 12:54AM. Under the impression that there must have been a work emergency which lead to URIBE calling her at such a late hour on a non-work day Plaintiff responded by sending a message to URIBE saying, “I was sleeping and I saw that you called.”
13. Defendant URIBE attempted to call Plaintiff again around 4:43AM. After Plaintiff did not answer her phone, URIBE sent Plaintiff a vulgar text message stating “**SWEET PUSSY.**”<sup>1</sup>
14. Plaintiff did not respond to the extremely vulgar message as she was shocked and insulted because she had only been working with Defendant URIBE for a couple of weeks and he barely knew her.
15. Around April 27, 2019, at approximately 4:59AM Defendant URIBE sent Plaintiff a message on WhatsApp asking “**WHAT ARE YOU DOING?**”<sup>2</sup>. When Plaintiff did not respond to his message URIBE sent her another message again asking “**WHAT ARE YOU DOING?**” at approximately 6:10AM.
16. When Plaintiff did not respond to his WhatsApp messaged Defendant URIBE proceeded to text her directly repeatedly asking, “**WHAT ARE YOU DOING ANDREA?**” Plaintiff responded by telling URIBE, “I am at home. Tell me if there is anything, I can help you with.” URIBE responded

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<sup>1</sup> This message was sent in Spanish and stated “Cuquita Rica” which is translated in to English for the purpose of this Complaint.

<sup>2</sup> All of the text messages described in this Complaint were sent primarily in Spanish and have been translated in to English for the purpose of this Complaint. Those messages are attached as screenshots and can be found in Attachment A to this Complaint.

by telling Plaintiff, **“NOTHING I AM JUST DRUNK AND TEXTING. I HOPE YOU SLEEP WELL.”**

17. Following these messages from Defendant URIBE Plaintiff became extremely fearful for her personal safety. Plaintiff was extremely concerned that since she went to work and came home alone that one day URIBE might follow her home.
18. Fearful and not knowing what to do, Plaintiff approached Defendants' Foreman CASTIBLANCO and showed him the various missed phone calls, WhatsApp messages and text messages that she had been receiving from Defendant URIBE.
19. Around June 22, 2019, Defendant URIBE sent Plaintiff a text message asking, **“CAN I ASK YOU SOMETHING WITHOUT YOU TELLING ANYBODY?”** Plaintiff responded, “Of course, tell me.” URIBE then asked her, **“WHAT COLOR ARE THOSE PANTIES?”**
20. Shocked and insulted Plaintiff complained to URIBE, “The relationship between you and I is clearly work. I think that these kinds of questions are too much.”
21. Around September 4, 2019, Plaintiff sent a text message to Defendant UNIBUD's owner ROBERT complaining about the vulgar and inappropriate text messaged that she and other female co-workers have been receiving from Defendant URIBE.
22. Up through around early September 2019, Plaintiff has continued to receive harassing text messages and phone calls from URIBE at inappropriate hours of the night and early morning between 10:30 PM and 4:30 AM.
23. Shortly thereafter, Plaintiff was constructively discharged.
24. Due to Defendants' actions, Plaintiff felt extremely humiliated, degraded, victimized, embarrassed and emotionally distressed.

25. Due to the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer the loss of income, the loss of salary, bonuses, benefits and other compensation which such employment without unlawful discrimination entails, and Plaintiff also suffered future pecuniary losses, emotional pain, humiliation, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Complainant has further experienced severe emotional and physical distress.
26. As Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands Punitive Damages as against Defendants.
27. The above are just some examples of some of the unlawful discrimination and retaliation to which Defendants subjected Plaintiff.
28. Defendants' conduct constitutes continuing violations.
29. As a result of Defendants' harassing, discriminatory and intolerable treatment, Plaintiff suffered and continues to suffer severe emotional distress and physical ailments.
30. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails. Plaintiff also suffers future pecuniary losses, emotional pain, suffering and inconvenience, loss of enjoyment of life and other non-pecuniary losses.
31. As Defendants' conduct has been malicious, willful, and outrageous and conducted with full knowledge of the law.
32. The above are some of the examples of the unlawful discrimination and retaliation Plaintiff experienced at the hands of Defendants.
33. Plaintiff hereby demands reinstatement.

**AS A FIRST CAUSE OF ACTION  
DISCRIMINATION UNDER TITLE VII  
(Not Against Individual Defendants)**

34. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint.

35. Title VII states in relevant part as follows:

“(a) Employer practices:

It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

36. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., as amended, for relief based upon the unlawful employment practices of the above-named Defendants. Plaintiff complains of Defendants’ violation of Title VII’s prohibition against discrimination in employment based, in whole or in part, upon an employee’s sex and gender.

37. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. 2000e et seq., by terminating and otherwise discriminating against Plaintiff as set forth herein because of Plaintiff’s sex and gender.

**AS A SECOND CAUSE OF ACTION FOR  
RETALIATION UNDER TITLE VII  
(Not Against Individual Defendants)**

38. Plaintiff repeats and re-alleges each and every allegation made in the above paragraphs of this Complaint.

39. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-3(a) provides that it shall be unlawful employment practice for an employer: “(1) to . . . discriminate against any of his employees . . . because she has opposed any practice made an unlawful employment practice by

this subchapter, or because she has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”

40. Defendants engaged in unlawful employment practices prohibited by 42 U.S.C. 2000e seq. by discriminating against Plaintiff with respect to the terms, conditions or privileges of employment because of her opposition to the unlawful employment practices of Defendants.

41. Plaintiff hereby makes a claim against Defendants under all of the applicable paragraphs of Title VII.

**AS A THIRD CAUSE OF ACTION  
FOR DISCRIMINATION UNDER  
NEW YORK STATE LAW  
(Against All Defendants)**

42. Plaintiff repeats and re-alleges each and every allegation made in the above paragraphs of this complaint as if fully set forth at length.

43. Executive Law §296 provides that “1. It shall be an unlawful discriminatory practice: (a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”

44. Defendants engaged in an unlawful discriminatory practice by discriminating against Plaintiff because of her sex/gender and by creating a hostile work environment.

**AS A FOURTH CAUSE OF ACTION  
FOR AIDING & ABETTING UNDER  
NEW YORK STATE LAW  
(Against All Defendants)**

45. Plaintiff repeats and re-alleges each and every allegation made in the above paragraphs of this



complaint as if fully set forth at length.

46. New York State Executive Law §296(6) further provides that “It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.”
47. Defendants engaged in an unlawful discriminatory practice by aiding, abetting, compelling and/or coercing the discriminatory behavior as stated herein.

**AS A FIFTH CAUSE OF ACTION  
FOR RETALIATION UNDER  
NEW YORK STATE LAW  
(Against All Defendants)**

48. Plaintiff repeats and re-alleges each and every allegation made in the above paragraphs of this complaint as if fully set forth at length.
49. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice: “For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because [s]he has opposed any practices forbidden under this article.”
50. Defendants engaged in an unlawful discriminatory practice by wrongfully retaliating against the Plaintiff.

**WHEREFORE**, Plaintiff demands judgment against all Defendants, jointly and severally, in an amount to be determined at the time of trial plus interest, punitive damages, attorneys’ fees, costs, and disbursements of action; and for such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues to be tried.

Dated: New York, New York  
February 1, 2021

Respectfully Submitted,  
**DEREK SMITH LAW GROUP, PLLC.**  
Attorneys for Plaintiff

A handwritten signature in blue ink, appearing to read 'Seamus Barrett', with a stylized, cursive script.

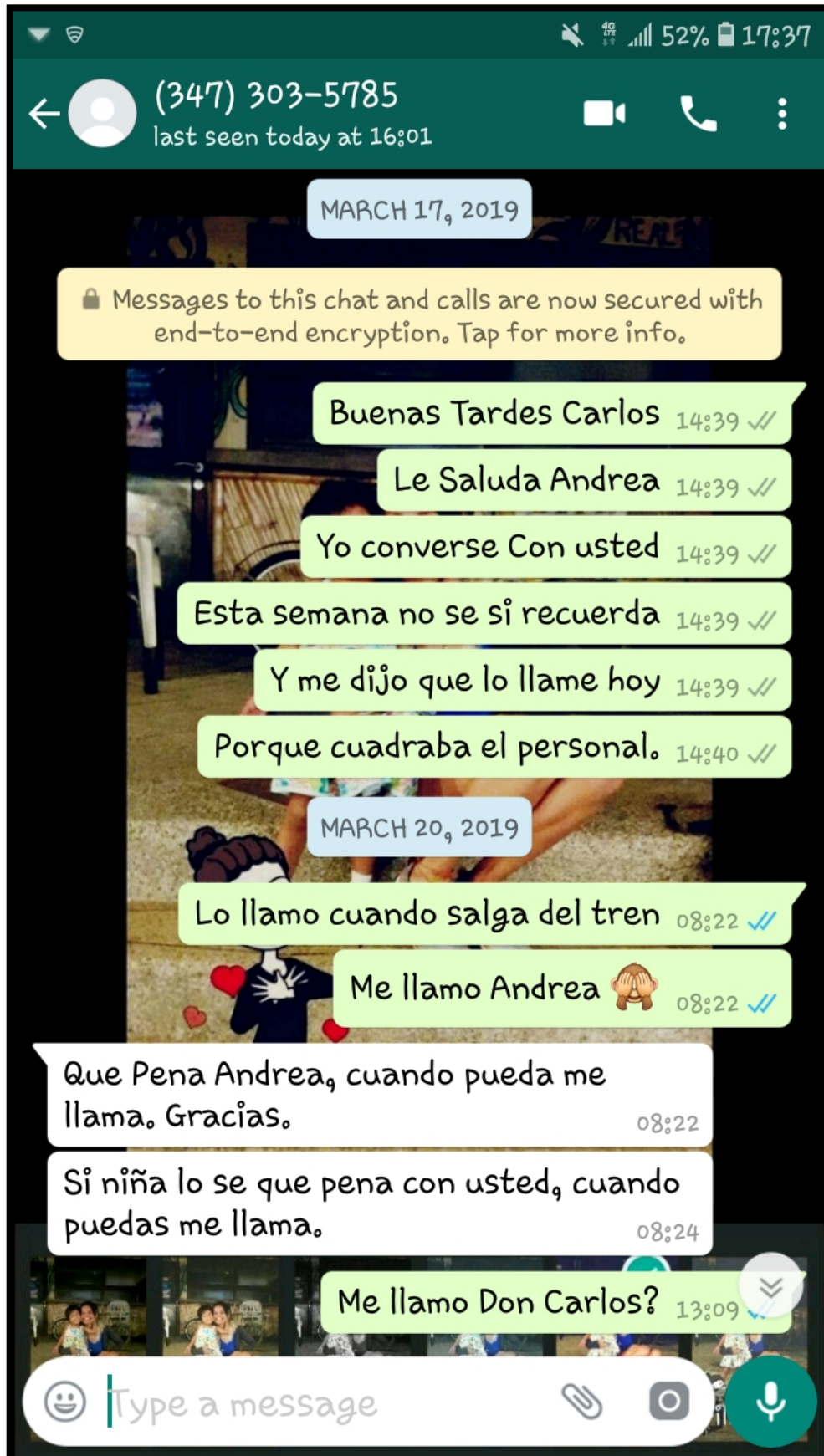
BY:

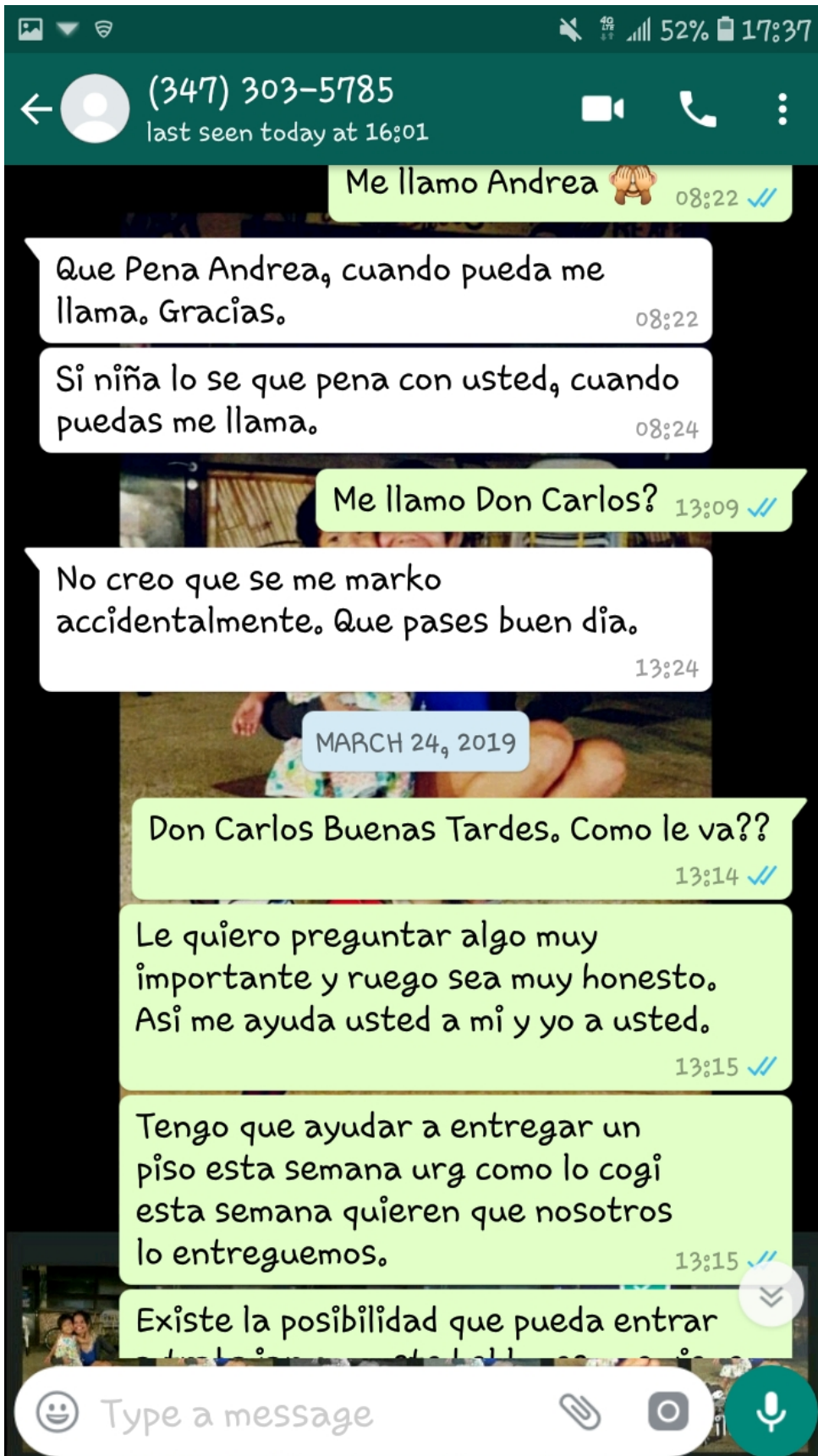
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Seamus Barrett, Esq.  
1 Pennsylvania Plaza, 49<sup>th</sup> Floor  
New York, New York 10119  
(212) 587-0760

# **ATTACHMENT ‘A’**







(347) 303-5785

last seen today at 16:01



Me llamo Andrea 🙇

08:22 ✓✓

Que Pena Andrea, cuando pueda me llama. Gracias.

08:22

Si niña lo se que pena con usted, cuando puedas me llama.

08:24

Me llamo Don Carlos?

13:09 ✓✓

No creo que se me marko accidentalmente. Que pases buen día.

13:24

MARCH 24, 2019

Don Carlos Buenas Tardes. Como le va??

13:14 ✓✓

Le quiero preguntar algo muy importante y ruego sea muy honesto. Así me ayuda usted a mí y yo a usted.

13:15 ✓✓

Tengo que ayudar a entregar un piso esta semana urg como lo cogí esta semana quieren que nosotros lo entreguemos.

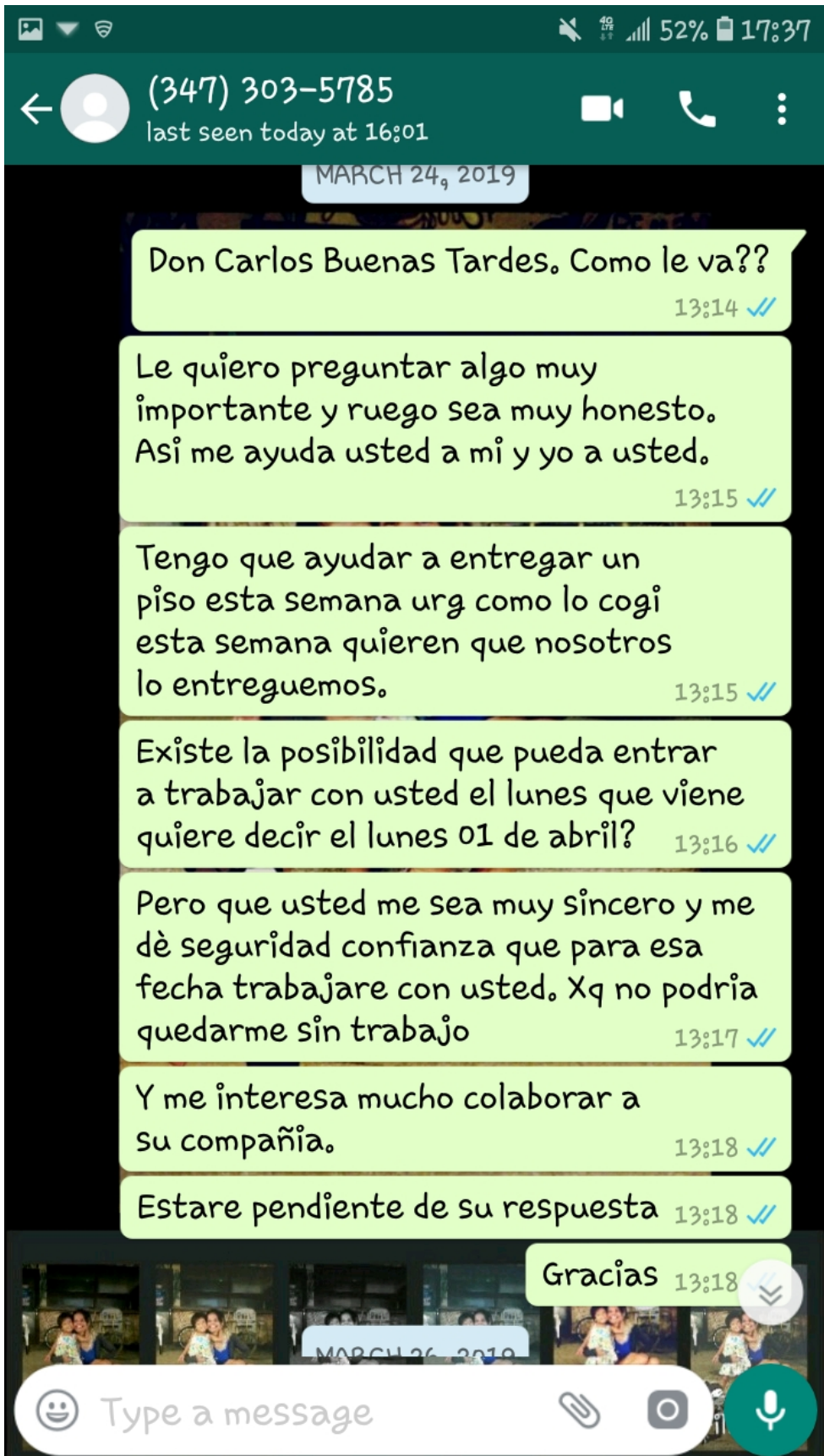
13:15 ✓✓

Existe la posibilidad que pueda entrar



Type a message





(347) 303-5785

last seen today at 16:01



MARCH 24, 2019

Don Carlos Buenas Tardes. Como le va??

13:14 ✓✓

Le quiero preguntar algo muy importante y ruego sea muy honesto. Asi me ayuda usted a mi y yo a usted.

13:15 ✓✓

Tengo que ayudar a entregar un piso esta semana urg como lo cogi esta semana quieren que nosotros lo entreguemos.

13:15 ✓✓

Existe la posibilidad que pueda entrar a trabajar con usted el lunes que viene quiere decir el lunes 01 de abril?

13:16 ✓✓

Pero que usted me sea muy sincero y me de seguridad confianza que para esa fecha trabajare con usted. Xq no podria quedarme sin trabajo

13:17 ✓✓

Y me interesa mucho colaborar a su compania.

13:18 ✓✓

Estare pendiente de su respuesta

13:18 ✓✓

Gracias

13:18



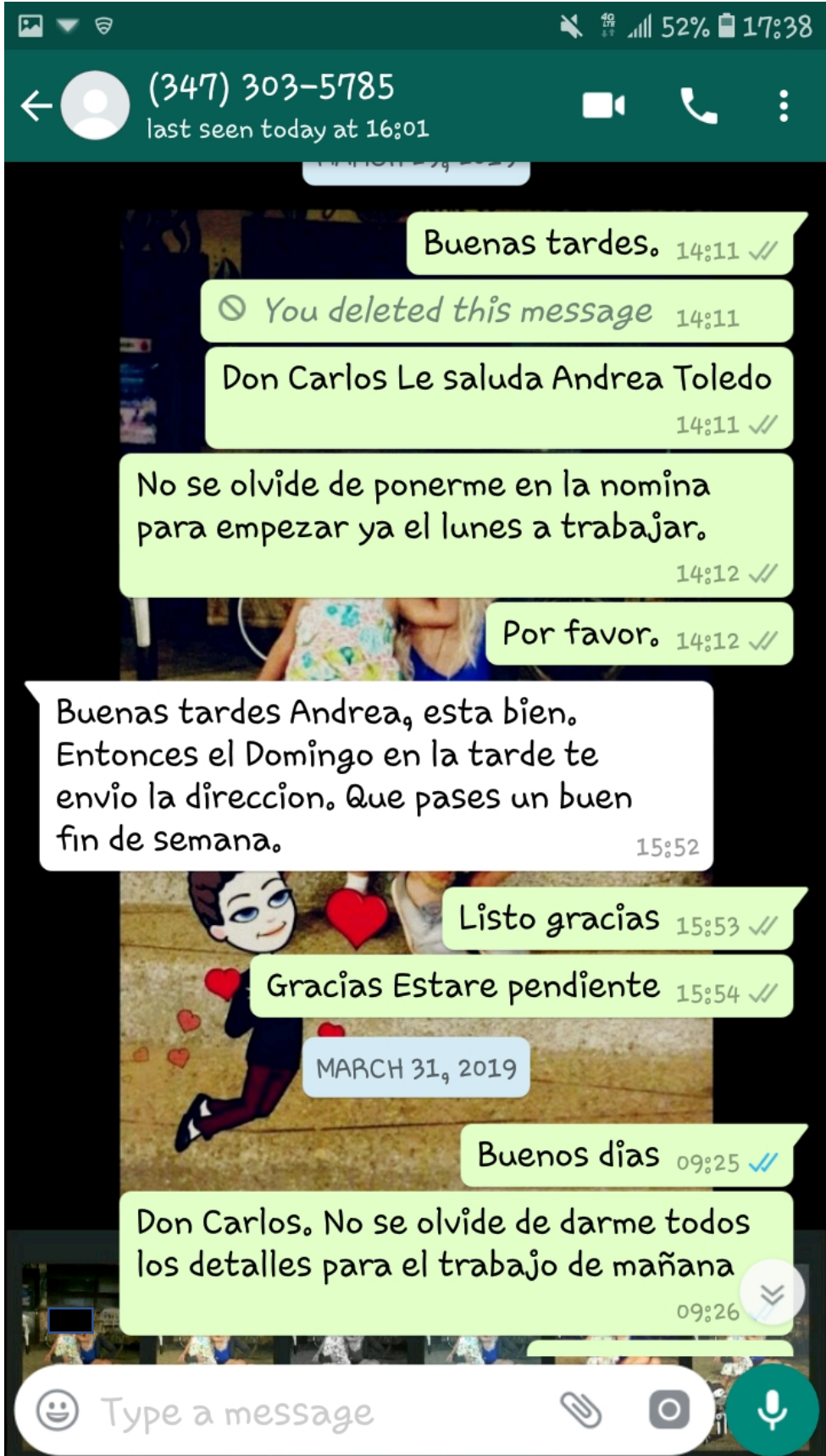
Type a message

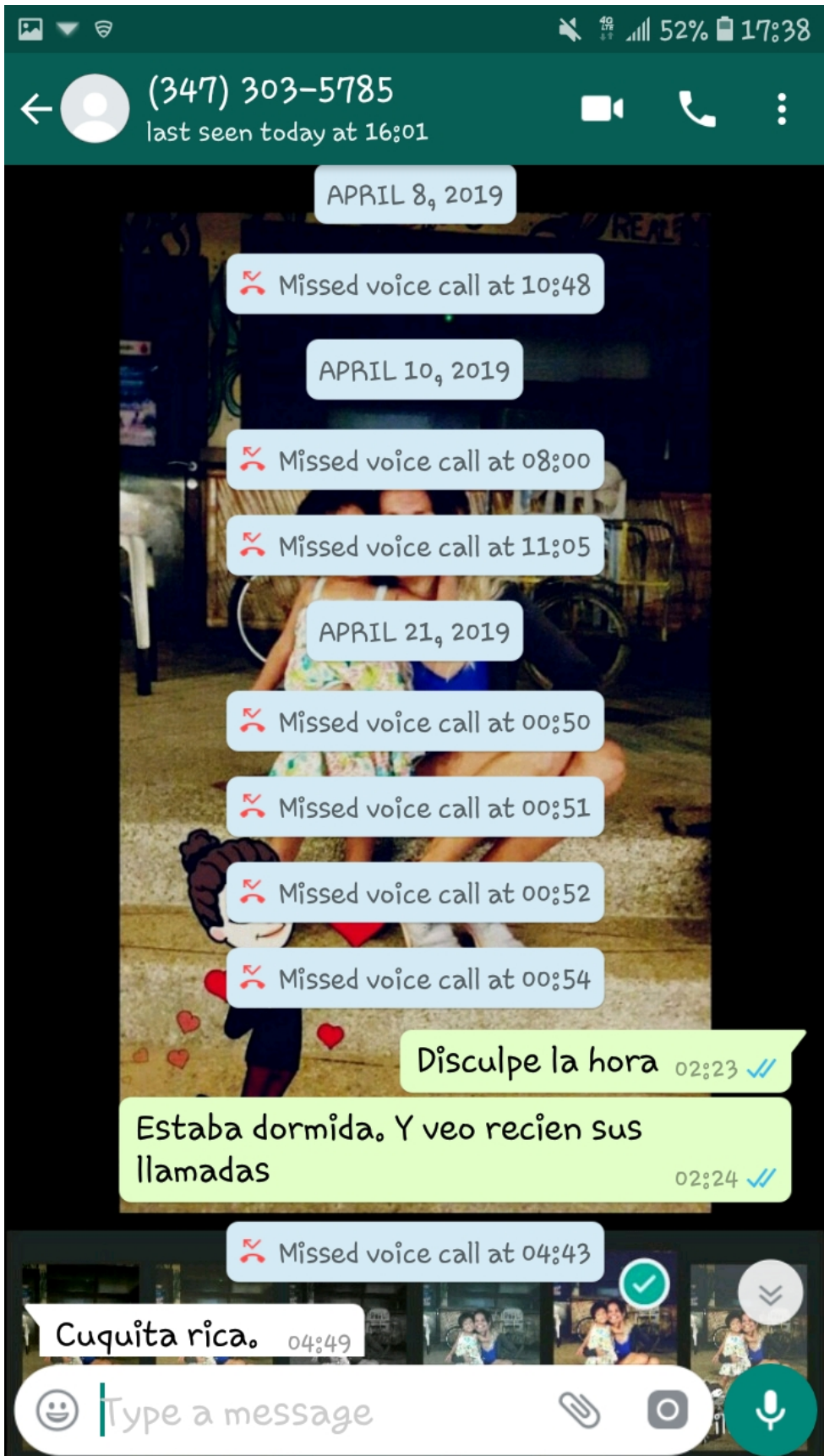












APRIL 8, 2019

Missed voice call at 10:48

APRIL 10, 2019

Missed voice call at 08:00

Missed voice call at 11:05

APRIL 21, 2019

Missed voice call at 00:50

Missed voice call at 00:51

Missed voice call at 00:52

Missed voice call at 00:54

Disculpe la hora 02:23 ✓✓

Estaba dormida. Y veo recién sus llamadas

02:24 ✓✓

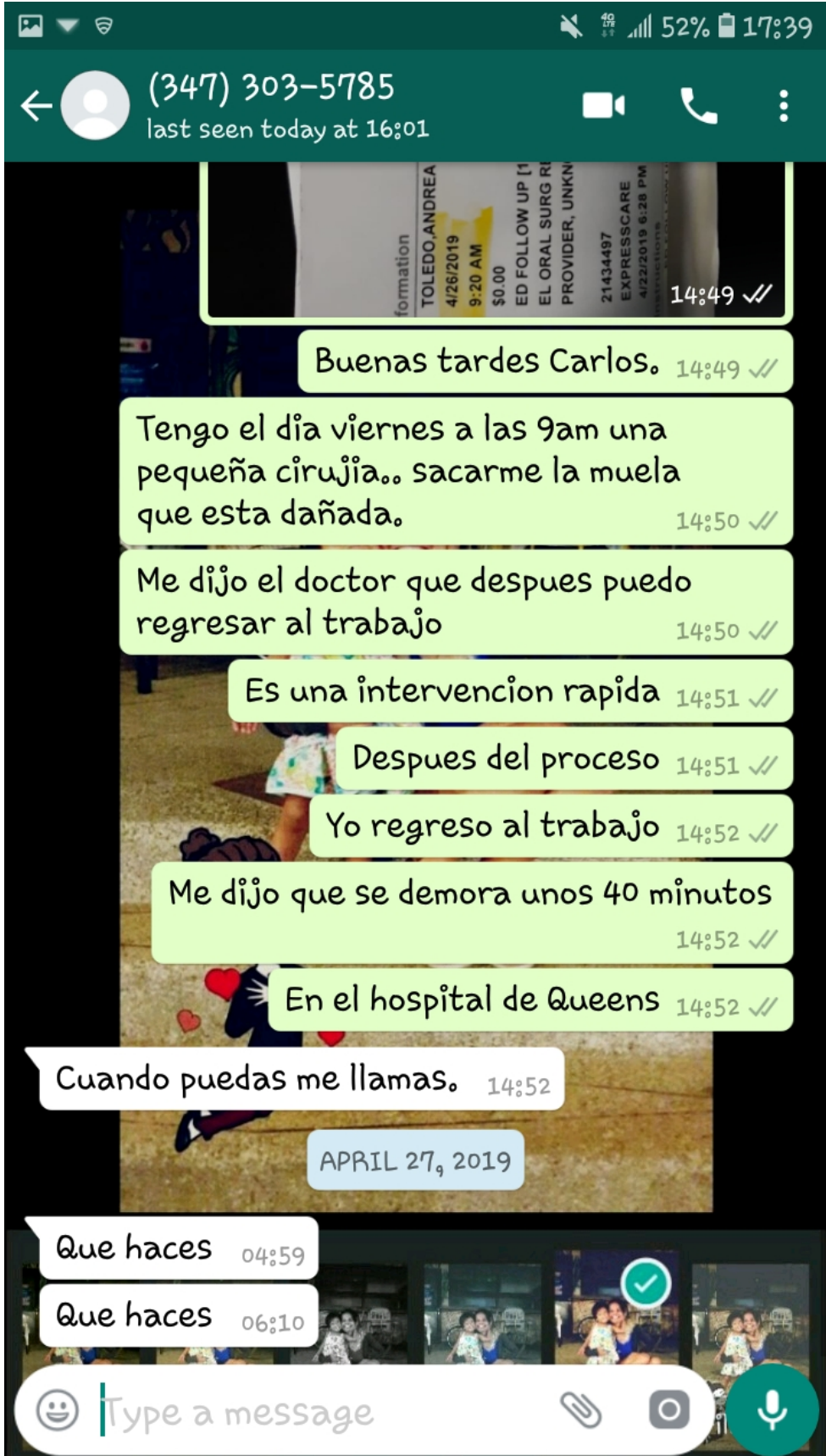
Missed voice call at 04:43

Cuquita rica. 04:49



Type a message









43% 18:45



(347) 303-5785

last seen today at 16:01



APRIL 21, 2019

Missed voice call at 00:50

Missed voice call at 00:51

Missed voice call at 00:52

Missed voice call at 00:54

Disculpe la hora 02:23 ✓✓

Estaba dormida. Y veo recién sus llamadas

02:24 ✓✓

Missed voice call at 04:43

Cuquita rica. 04:49

Que haces 11:29

Buenas tardes Don Carlos 13:50 ✓✓

Digame 13:50 ✓✓

Andrea buenas tardes que pena contigo, no se como pero te mande unos mensajes intendidos para otra persona. Disculpame y Felizes Pascuas.

19:00



Type a message





5G 52% 17:40

< (347) 303-5785



Te llamo mas tarde  
pero esta es la di-  
reccion. Hay nos ve-  
mos mañana si Dios  
Quiere. Disculpame  
pero es que estoy  
un poco ocupado.

136 E 76th St, New  
York, NY 10021

8:30 am

César Castiblanco  
Forman

646-626-9161

18:00

Listo gracias



Enter message





52% 17:40

< (347) 303-5785



Listo gracias  
infinitas



Read

Dios me lo bendiga

Read  
18:00



Amen, a usted  
tambien.

18:01

Tuesday, April 2, 2019

Hola Carlos Buen  
dia.  
De malas 😞  
amaneci muy  
Indispuesta dolor de  
huesos fiebre dolor  
de cabeza dolor de  
garganta. El frio y  
viento de ayer me



Enter message





5G 52% 17:40

< (347) 303-5785



Saturday, April 27, 2019



Hey...

06:24

Buanos días Don  
Carlos Digame

Read  
06:32



Que haces Andrea?

06:43

En que lo puedo  
ayudar

Read  
06:49



Que haces?

08:32

Me encuentro en  
casa Don Carlos.

Read  
08:33



Te puedo pedir algo?

08:35



Enter message





5G 52% 17:40

< (347) 303-5785



Te puedo pedir algo?

08:35

Read  
08:38

Dígame. Si esta en  
mi alcance lo ayudo



Que haces?  
Durmiendo?

08:41

Read  
08:42

Don Carlos dígame  
en que lo puedo  
ayudar



Nada borracho y  
textiando.

08:45



Que descansas.

08:46

Monday, June 17, 2019



Enter message







5G 52% 17:41

< (347) 303-5785



Saturday, June 22, 2019



Que haces?

06:27

Read  
06:48

Buen día Don Carlos



Te puedo preguntar  
algo sin contarle a  
nadie?

06:49

Si claro.

Read



Digame

Read  
06:49



Que color son esos  
panties?

06:50

El trAto entre usted  
y yo es netamente



Enter message





52% 17:41

< (347) 303-5785



El trAto entre usted  
y yo es netamente  
laboral. Creo  
que ese tipo de  
cuestionamientos  
esta demas.



Read  
06:53



Ok sorry

06:54

No se preocupe. Que  
tenga un buen día



Read  
06:59



No le cuentes a  
nadies

07:00

Yo he mantenido  
este tipo de msg.  
De una manera muy



Enter message





5G 52% 17:41

< (347) 303-5785



Read  
06:53

cuestionamientos  
esta demas.



Ok sorry

06:54

Read  
06:59

No se preocupe. Que  
tenga un buen día



No le cuentes a  
nadies

07:00

Read  
07:01

Yo he mantenido  
este tipo de msg.  
De una manera muy  
discreta



Te eh tenido unas  
ganas.

07:02



Enter message





4G 40% 11:06



Me



17:17, Sep 4

Good afternoon Don Robert greets you Andrea I would like to discuss 2 topics in this conversation. The first one that approached me to work in this week, in apology if I have not really I have not felt anything right, I talked with Walter the foreman on Tuesday and I apologized because I promised to go to work but in these cases the health It is first and I need to have a little more mobility in my arm so that the pain and inflammation disappear. If God permits, I give you my word that on Monday I will already be making myself present in VanDam.



4G 17% 40% 11:06



Me



17:17, Sep 4

The second. This is a very, very delicate issue, I have not said it before because of fear. No one in the company knows it but it is time that this type of abuse is due to stop. Mr. Carlos Uribe has been in the month of April since I joined the company to send me messages on weekends (not all) telling me and asking me totally improper, obscene, nothing work and they are in the early hours of the morning



4G 40% 11:06



Me



17:18, Sep 4

calling it in other terms. This is workplace sexual harassment. Mr. Uribe has personally apologized on few occasions saying that the messages and calls he makes to me is a mistake, but it would be justified as a mistake if it is once but in my case they are already sometimes and this is NOT A MISTAKE. Also I am not the only one, because conversing with the partner Genesis The same thing has happened to her, It is more Genesis has had problems in her home with her husband because of this and she has blocked Mr. Uribe's number. Don Robert I have kept quiet for fear of losing my job because I thought that if I told you the reprisal would have been against me in getting me out of the company and certainly also afraid that at the time I complained to you I would not know the reaction in action of Mr. Uribe.



4G 40% 11:06



Me



17:19, Sep 4

But I decided to talk because this must stop. The Saturday that happened I received messages from the Lord again late at night and I feel bad about what is happening to me, Because there are people even with negative attitudes that damage a work environment, I all the messages had them on my cell phone. And anguish of not knowing what will happen after this because I can not shut up more I found myself in the obligation today to inform you what is unfortunately happening for a few months ago with angry fear 9 with



4G 40% 11:06

< Rober Boss



the messages had  
them on my cell p



VIEW ALL



17:19

(R)

Hi Andrea . I really  
sorry for this situa-  
tion. We didn't know  
anything. You won't  
lose job. That's for  
sure. Maybe it would  
be good to meet  
me and Chris with  
you and someone  
who speak English.  
We won't tolerate  
this behavior from  
Carlos or any other  
foreman.

17:26



Enter message

